

MISC. CIVIL APPLICATION NO. 358 OF 1992.

Date of decision: 19.12.1995

For approval and signature

The Honourable Mr. Justice S. M. Soni

and

The Honourable Mr. Justice R. R. Jain

Mr. R.K. Mishra, advocate for petitioners.

Mr. B.S. Patel and Mrs. N. B. Patel, advocate for respondents.

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: S.M. Soni & R.R. Jain, JJ.

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December 19, 1995.

Oral judgment (Per Soni, J.)

Learned advocates for the parties are absent in Court on call.

Petitioners have filed this application for taking appropriate action against respondents under the Contempt of Courts Act for non-compliance of the order of the

Primary Education Tribunal dated 7.2.1990 in Application Nos.100 of 1988 and 124 of 1988. The said order came to be challenged before this Court (Coram: G.N. Ray, C.J. & C.K. Thakkar, J.) and this Court passed the following order:

"In that view of the matter, we modify the interim order by directing that from the month of September 1991, the petitioner will pay to the teachers the salary as per award. The question of payment of arrears of salary will be decided at the time of disposal of the Special Civil Application No.6310 of 1990 or on the availability of the suitable grant-in-aid from the Government, whichever is earlier."

This suggests that this Court has also directed to pay the salary difference as per new pay scale or it can be said that the direction was to the effect to pay salary as per new pay scale granted by the Government. It is on record that salary, as per old scale, has been paid and is being paid and what remains is the difference due to scale fixed by the Government.

We have, in Miscellaneous Civil Application No. 1949 of 1994, taken a view that order passed by Primary Education Tribunal is executable inasmuch as the provisions of the Civil Procedure Code are applicable. When the award is executable and in view of the judgment of the Supreme Court in the case of the Alahar Co-operative Credit Service Society v. Sham Lal, reported in 1995 (2) GLH, 550, contempt proceeding is not a substitute for execution, we would not like to exercise our jurisdiction under the Contempt of Courts Act. Hence, the proceedings are dropped. Rule discharged. No costs.